able include the fractional portion of the franchised distributor's assets devoted to the franchise, loss of good will, loss of profits calculated at five times the profits obtained as a result of the threatened franchise operation, attorneys fees and costs.

The Delaware Franchise Security Law was made applicable to franchises in existence at its effective date, July 7, 1970, and to the renewal of such franchises, as well as to franchise agreements subsequently executed.

It is against this frame that the foregoing constitutional questions are presented to this Court.

CONSTITUTIONAL PROVISIONS AND DELAWARE STATUTE INVOLVED.

Article I, Section 10 of the Constitution of the United States provides that "No State shall . . . pass . . . any law impairing the obligation of contracts."

Amendment XIV to the United States Constitution pertinently provides that "nor shall any State deprive any person of life, liberty, or property, without due process of law".

Title 6, Delaware Code, §§ 2551, *et seq.* known as the "Delaware Franchise Security Law" is set forth in full in Appendix B, pp. 24 to 30, *infra.*

STATEMENT OF THE CASE.*

The Petitioner, Globe Liquor Co., Inc. ("Globe"), is a Delaware corporation engaged in the business of the wholesale distribution of alcoholic beverages, under a license granted by the State of Delaware. Globe deals in the purchase and distribution to retailers of products which bear the trademark or trade name of five manufacturers which it represents in Delaware. The Respondent, Four Roses Distillers Company ("Four Roses"), is engaged in the business of selling to franchised distributors alcoholic beverages which bear the trademark or trade name of the manufacturer.

Globe has been the Four Roses wholesale distributor and franchisee in Delaware for 21 years. On August 1, 1969, Four Roses and Globe entered into the most recent of a long series of written franchise agreements whereby Globe agreed to distribute Four Roses' products within the State of Delaware for another year.

On June 29, 1970, Four Roses notified Globe and the Delaware Alcoholic Beverage Control Commission ("Commission") that it did not intend to renew the Globe franchise agreement when it expired by its own terms on July 31, 1970. Under Commission rules the discontinuance would have been effective as of September 30, 1970, provided the cancellation were approved by the Commission.

By an action filed originally in the Delaware Chancery Court, Globe sought injunctive relief and damages under the recently enacted "Delaware Franchise Security Law", Title 6, Delaware Code, Sections 2551, *et seq.*, effective July

* The facts stated in the first three paragraphs of this Statement derive from the Complaint, a certified copy of which is before this Court along with the balance of the Record. For purposes of review the parties have recorded an agreement that the allegations of the Complaint are true.

7, 1970 [Appendix B, pp. 24 to 30]. The law is designed to regulate the relationships between franchisors and franchisees in what is considered as one of America's fastest growing industries, and to protect franchisees from frequently unwarranted and capricious terminations of their enterprises.

After suit was filed, Four Roses moved to dismiss the complaint, charging that the statute was repugnant to the Contracts Clause of the Constitution of the United States and the Due Process Clause of the Constitution of the United States, Amendment XIV, and the Constitution of the State of Delaware, and is, therefore, void.

Pending a final determination of the constitutional questions raised by Four Roses' motion to dismiss, the parties, with the approval of the Court of Chancery of the State of Delaware, agreed to postpone the determination of certain factual issues, and jointly petitioned the Court of Chancery to certify to the Supreme Court of Delaware the constitutional questions raised, based upon a stipulation as to all relevant facts. The Court of Chancery certified the constitutional questions, and the Delaware Supreme Court entered its order approving certification.

After briefing and oral argument, the Delaware Supreme Court on June 29, 1971 handed down its decision on the questions certified [Appendix A, pp. 13 to 23], declaring that the Delaware Franchise Security Law was repugnant to the Contracts Clause, Article I, Section 10, of the United States Constitution, and that the damage provisions of the statute were in violation of the Due Process Clause of Amendment XIV to the United States Constitution.[1]

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1. It is noteworthy that, although the Delaware Franchise Security Law was assailed as being in contravention of the Delaware Constitution, the Delaware Supreme Court made no finding one way or the other on that (logically) threshold issue. Rather it leaned solely on the United States Constitution to support its conclusion.

REASONS FOR GRANTING THE WRIT.

1. This case raises important questions of federal constitutional law which have not been, but should be, decided by this Court. The Delaware Supreme Court has decided that an enactment declared by Delaware's legislature, in the legitimate exercise of its police power, to be necessary for the protection and regulation of legitimate franchise businesses, is invalid under the obligation of contracts clause of the federal constitution. The validity of a similar, Puerto Rican statute, known as the Dealer's Contract Law came before this Court on appeal from a decision of the First Circuit Court of Appeals which had found the law unconstitutional as a denial of due process. The case was remanded to the federal District Court with instructions to hold its hand until the Puerto Rican Supreme Court, which had not yet construed the statute, authoritatively ruled on the local law question in light of the federal claims, there being certain delicate conflicts which exist between the Spanish and Anglo-Saxon legal traditions. *Fornaris v. Ridge Tool Co.*, — U. S. —, 27 L. Ed. 2d 174, 91 S. Ct. — (1970). Nonetheless, it is noteworthy that, despite argument of counsel, the lower court had refused to find the Puerto Rican statute invalid under the Contracts Clause of the United States Constitution. [See 423 F. 2d 563.] Indeed, no recent case can be found where a statute enacted under the police power of a state has been vitiated by the courts because it incidentally affects private contract obligations. This Court long ago adopted the doctrine that the obligations of private contracts must give way where necessary in order to safeguard the economic structure upon which the good of all depends.

> "The economic interests of the State may justify the exercise of its continuing and dominant protective power notwithstanding interference with contracts

> . . . . With a growing recognition of public needs and the relation of individual right to public security, the court has sought to prevent the perversion of the clause through its use as an instrument to throttle the capacity of the States to protect their fundamental interests." *Home Building and Loan Association v. Blaisdell*, 290 U. S. 398, 444, 78 L. Ed. 413, 54 S. Ct. 231 (1934).

The growth of franchised business operations has been phenomenal over the past few years and in recent years this form of business enterprise has produced an estimated 10% of the gross national product.[2] The business press abounds with articles deploring the abuses of franchised operations, particularly summary terminations where the franchisee is left with little or nothing to show as a result of his investment and labors.[3] Since 1966, each session of Congress has included bills and hearings designed to extend to all franchisees coverage similar to the federal franchise protective legislation known as the "Auto Dealer Day in Court Act". 15 U. S. C. § 1221, *et seq.* Other state legislatures are studying franchise distribution systems with the objective of enacting legislation to protect franchisees within their borders.[4]

Whether or not such needed regulatory legislation should be struck down on the basis that it impairs private contract obligations is a constitutional question with far-ranging effects upon numerous business enterprises, many

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2. *Business Week*, January 31, 1970, p. 30.

3. *Fortune*, "Franchising's Troubled Dream World", Charles G. Burch, March 1970, p. 116; *Business Week*, January 3, 1970, p. 15, January 31, 1970, p. 30, April 4, 1970, p. 26; *Dun's Review*, 93:36, January 8, 1969; *Journal of Retailing*, 44:21, Winter 1968, 1969.

4. California, New York, Massachusetts, Texas. *Journal of Retailing. Ibid.*

of which are directly concerned with and/or engaged in interstate commerce. This Court is the only proper one to determine how the Contract Clause of the United States Constitution should be applied to this new form of regulation and control of franchised business ventures.

2. For the same reasons this Court should determine whether or not the "damage" provisions of the Delaware Franchise Security Law violate the Due Process Clause of Amendment XIV to the United States Constitution. The peculiar nature of franchise operations, the frequently high, sometimes exorbitant, initial investment required from the franchisee, and the value of the effort and time expended by the franchisee to make such a venture successful, combine to make impossible a computer-like assessment of the pecuniary damage or monetary loss suffered by disenfranchised businessmen. Statutory guidelines are required. The Delaware Supreme Court has held that the guidelines established by the Delaware Franchise Security Law constitute punishment rather than compensation, and therefore take property without due process of law. The court below did not find that loss of profits and good will, loss of tangible assets attributable to the franchise, or all other damages allowed by law as set forth in the statute, were punitive per se. Nor did it find that actual damages could not include all these factors. Instead, it merely found that the statutory damages are, in fact, punitive because the statute does not specifically state that actual damage must be shown. The legislation presumes that those persons who come within the limited class of protected franchisees will suffer damages from the loss of their businesses, and must be compensated therefor. To establish the basis for the recovery of a specified amount set forth in the legislation does not make such damages punitive and in violation of due process of law.

This kind of legislation has economic and commercial importance to the nation. Because of the difficulty, if not impossibility, of accurately determining the actual damages to a disenfranchised businessman, he is in danger of being allowed to suffer a wrong without a remedy unless damages are specified. This Court should decide whether or not a given statutory measure of includable damages is repugnant to Amendment XIV of the United States Constitution.

CONCLUSION.

For the reasons stated, the writ of certiorari should be granted.

Respectfully submitted,

H. ALBERT YOUNG,
BRUCE M. STARGATT,
Counsel for Petitioner.

Of Counsel:
YOUNG, CONAWAY, STARGATT & TAYLOR,
Wilmington, Delaware,

Dated: July 30, 1971

APPENDIX A.

OPINION OF THE SUPREME COURT OF DELAWARE.

IN THE

SUPREME COURT OF THE STATE OF DELAWARE

No. 151, 1970.

GLOBE LIQUOR CO., A DELAWARE CORPORATION,
Plaintiff,

v.

FOUR ROSES DISTILLERS COMPANY, A DIVISION OF JOSEPH E. SEAGRAM & SONS, INC.,
Defendant.

(June 29, 1971.)

WOLCOTT, Chief Justice; CAREY, Justice, and MARVEL, Vice Chancellor, sitting.

Proceeding on Certification from the Court of Chancery in and for New Castle County.

Bruce M. Stargatt of Young, Conaway, Stargatt & Taylor, Wilmington, for Globe Liquor.

James M. Tunnell, Jr., Walter K. Stapleton and Kenton L. Cobb of Morris, Nichols, Arsht & Tunnell, Wilmington, for Four Roses.

WOLCOTT, *C. J.*:

This matter comes to us by Certification from the Court of Chancery. The action is brought under the Dela-

ware Franchise Security Law (6 *Del. C.* § 2551 et seq., effective July 8, 1970) by Globe Liquor Co., a licensed liquor distributor, against Four Roses Distillers Company for injunctive relief and damages under that law. The action is based upon the attempt by Four Roses to terminate, in accordance with its provisions, the franchise granted Globe to distribute Four Roses' products in Delaware. The Franchise Security Law purports to prevent such termination except under certain conditions.

The certified questions of law are:

"Does the Delaware Franchise Security Law violate either:

"A. Section 10 of Article I of the Constitution of the United States;

"B. The Fourteenth Amendment of the Constitution of the United States;

"C. Section 7 of Article I of the Constitution of the State of Delaware; or

"D. Section 8 of Article I of the Constitution of the State of Delaware?"

Globe and Four Roses, on August 1, 1969, contracted to the effect that Globe, for a period of one year, was appointed as the sole distributor of Four Roses' products in Delaware. The contract provided that it would expire automatically on July 31, 1970. On June 29, 1970 Four Roses notified Globe that it did not intend to renew the franchise agreement upon its expiration. This action followed, based upon the contention that the Franchise Security Law prohibited the unilateral termination.

The Franchise Security Law states as its purpose the protection of franchised distributors against the termina-

tion by their supplier and licensors of their franchises "on short notice without just cause." The Law further states that such "unjustified terminations" have deprived franchisees of their equity, eliminated jobs, and otherwise adversely affected the economic stability of the State. The policy underlying the Law is the elimination of these undesirable results.

The Law covers:

(1) All wholesalers of trademark or trade name products;

(2) All retailers of products which bear the trademark or trade name of no more than three manufacturers;

(3) All wholesalers of publications.

Globe is subject to the Law as a franchise distributor since it is a wholesaler of trademark or trade name products, and Four Roses is subject to the Law as a franchisor selling trademark or trade name products to a franchise distributor.

The second section of the Law provides that a franchisor shall not "unjustly terminate a franchise" and "unjustly refuse to deal with a franchised distributor with whom such franchisor has been dealing for at least two years." "Unjust" and "unjustly" are defined to mean "without good cause or in bad faith."

The third section of the Law provides remedies to a franchised distributor if a franchisor unjustly terminates or threatens to terminate, or unjustly fails to renew or threatens to fail to renew a franchise. These remedies are the recovery of statutory damages and the right to secure in the Court of Chancery an injunction against the termination or refusal to renew.

The statutorily prescribed damages include but are not limited to the following:

1. The value of the franchised distributor's tangible assets attributable to the franchise;

2. Loss of good will;

3. Loss of profits, presumed to be not less than five times the profit in the most recently completed fiscal year;

4. All other damages allowed by law; and

5. Counsel fees and expenses.

Finally, the Law provides that even with good cause a franchisor shall not terminate or fail to renew without giving ninety days' notice to the franchised distributor.

Four Roses argues that the Franchise Security Law is unconstitutional because it impairs the obligation of a contract.

Section 10, Article I of the Federal Constitution provides that no State shall pass any law impairing the obligation of contract. In the early days of the Union the clause was used to strike down State action which had the effect of impairing or destroying the rights of one party to a contract; e.g., *Sturges v. Crowninshield,* 4 Wheat. 122, 17 U. S. 122 (1819); *Dartmouth College v. Woodward,* 4 Wheat 518, 17 U. S. 518 (1819); *Fletcher v. Peck,* 6 Cranch 87, 10 U. S. 87 (1810).

However, economic growth and social evolution required that the contract clause not be permitted to stand in the way of attempts by the States to provide for the public health, safety and welfare under their police powers. *Home Building and Loan Association v. Blaisdell,* 290 U. S. 398, 54 S. Ct. 231 (1934). The prohibition of the contract clause is no longer absolute and must yield to the

right of the State to legislate to protect vital interests of the people, even though in so doing an incidental effect is the altering of remedial rights of contracting individuals. *W. B. Worthen v. Thomas,* 292 U. S. 426, 54 S. Ct. 816 (1934).

However, the courts have held that the States may not use their police power to alter or strike away the substantive rights and obligations of contracting parties without paying compensation. Only minor impairment or infringement of contractual rights is permissible. Hale, *The Supreme Court and the Contract Clause,* 57 Harv. L. Rev. 512 (1944); Hockman, *The Supreme Court and the Constitutionality of Retroactive Legislation,* 73 Harv. L. Rev. 692 (1960).

The effect of the Delaware Franchise Security Law is to transform the contract between Globe and Four Roses from one providing for a period of one year only with no right of renewal on the part of Globe to a contract to extend into the indefinite future which Four Roses may terminate only upon certain conditions and at its peril.

Substantial financial obligations are imposed upon Four Roses if it terminates or even attempts to terminate its relationship with Globe, and is unsuccessful in establishing that it is doing so for good cause and in good faith. It must decide at its peril whether or not it has good cause to terminate, and if it fails in this determination it is subjected to the payment of statutory damages which could be so substantial as to make it clear that they are savagely punitive, even though there was no proof by Globe that it had suffered any actual damages whatsoever. Indeed it is difficult to visualize that Globe could, under any circumstances, show any damage flowing merely from a threat to terminate; yet the making of such a threat is ground for Globe to seek its remedies, including damages, under the Law.

We think the Delaware Franchise Security Law accordingly makes a substantive change in the rights and obligations under this contract. These substantive changes are the imposition on Four Roses of the obligation to deal with Globe indefinitely, and the imposition of a penalty in the form of damages if it attempts to insist on its contractual rights. It is therefore not a minor change or infringement permissible under the exercise of the police power. It is therefore proscribed by the Contract Clause of the Federal Constitution.

Four Roses also argues that the Franchise Security Law is unconstitutional because it contains standards so vague and indefinite as to deprive a franchisor of property without due process of law in violation of the Fourteenth Amendment of the Federal Constitution and Article I, Section 7 of the Delaware Constitution, which prohibit the taking of property without due process of law. *Ajax Distributors v. Springer,* 26 Del. Ch. 101, 22 A. 2d 838, aff'd. 26 Del. Ch. 449, 28 A. 2d 309 (1949).

Under the Law a failure to renew a franchise is unjust if it is made "without good cause or in bad faith." This is the only standard of conduct laid down. A franchisor seeking to terminate the franchise must therefore act at its peril in deciding to terminate, or even to threaten to terminate. If later the court concludes that the termination or the threat was "unjust", the franchisor then becomes subject to the imposition of the statutory damages which may be, and probably are, unrelated to the actual damages suffered by the franchisee. This, argues Four Roses, is the taking of property without due process of law.

It is true that a statute which imposes a standard of conduct for the breach of which an individual will be held responsible must define the conduct with sufficient particularity to enable him to make his conduct conform. If men of common intelligence must, of necessity, guess at

its meaning and reach different conclusions as to its meaning, the statute is unconstitutionally vague. *Connally v. General Construction Company,* 269 U. S. 385; 46 S. Ct. 126 (1926); *Lanzatta v. New Jersey,* 306 U. S. 451, 59 S. Ct. 618 (1939); *State v. Robinson,* 251 A. 2d 552 (Del. Supr. 1969). While the question of vagueness has usually arisen in criminal cases, nevertheless in the context of the application of due process of law civil statutes as well are tested by it. *A. B. Small Company v. American Sugar Refining Company,* 267 U. S. 233, 45 S. Ct. 295 (1925).

If the language of a statute is attacked on the ground of vagueness, it will be upheld if the language used has a well-settled meaning in law, even though there could be differences of opinion as to elements of degree. *Nash v. United States,* 229 U. S. 373, 33 S. Ct. 780 (1913). Nor will a statute be held unconstitutional if the courts can look through imprecision of language to the intent of the Legislature. *Connally v. General Construction Co.,* 269 U. S. 385, 46 S. Ct. 126 (1926).

The question is therefore whether "good cause" and "bad faith" have such a settled meaning in law that they set up an intelligible standard of conduct. We think they do.

For example, under the National Labor Relations Act, 29 U. S. C. § 158(d), an employer is required to bargain in good faith. A holder in due course under the Uniform Commercial Code is one who takes an instrument for value in good faith, and a buyer in the course of business is one who purchases in good faith. U. C. C. §§ 3-302, 1-201(9). The term "good faith" is defined in the Uniform Commercial Code as "honesty in fact" (§ 1-201(19)).

Similarly, the term "good cause" has been repeatedly used in the law to establish a standard of conduct. For example, the Unemployment Compensation Law by 19 *Del. C.* § 3315(1) disqualifies an individual who has voluntarily

left his job "without good cause", and the Delaware Alcoholic Beverage Control Commission may refuse certain license and franchise applications "for cause". *Rule 46, Delaware Alcoholic Beverage Control Commission.*

In short, we think the Delaware Franchise Security Law is not unconstitutional for vagueness.

Finally, Four Roses argues that the Law is unconstitutional because it violates the Fourteeth Amendment and Article I, Sections 7 and 8 of the Delaware Constitution. The argument is that the Law imposes an unreasonable classification between wholesale and retail franchises. The classification of franchisees distinguishes between all wholesalers and retailers who deal in no more than three trademark or trade name products of manufacturers.

A State in the exercise of its police power may regulate businesses for the public benefit if conditions present a reasonable necessity for the imposition of restraint, and the means employed bear a reasonable relation to the end sought. *Mid-Penn National Mortgage Company v. Hughes,* 258 A. 2d 291, aff'd. 268 A. 2d 876; *Hoff v. State,* 9 W. W. Harr. 134, 197 A. 75 (1938). Both the interest of the public and the reasonableness of the means employed must be present before the use of the regulatory authority of the State may be interposed in private business activity.

Four Roses argues that since the purpose of the Franchise Security Law is to prevent economic injury to franchised distributors, which affects the State's economic stability, the Law goes beyond the necessities in its classification of franchised distributors and in the remedies provided for a breach.

It is argued that the classification of all wholesalers and of all retailers who sell not more than three trade name products has no reasonable justification in the light of the statutory purpose. Four Roses points out that presumably

the classification of retailers selling not more than three trade name products would carry out the statutory intent and protect from loss a retailer who is in fact economically dependent upon the sale of the products and who has used his efforts in promoting them. It is conceded that this limitation relates to the object of the Law.

In the case of the wholesaler, however, it is argued, the classification is unreasonable because, since the wholesaler may act as distributor for an infinite number of trade name products, there is no necessary inference that he is economically dependent on the franchise. Therefore, says Four Roses, the classification is arbitrary.

Furthermore, argues Four Roses, since Globe is a wholesaler distributor acting as distributor for Four Roses and for five other manufacturers as well, there can be no inference of economic dependence upon the Four Roses franchises. Also, it is pointed out that if, in fact, Globe was a retailer, it would have no remedy under the Law at all because it deals in more than three trade name products. The result, it is argued, is inexplicable in the light of the statutory purpose.

An identical argument is made with respect to the requirement that damages be paid to wholesale distributors irrespective of the existence of any actual economic injury taking place as a result of franchise termination, the prevention of which is the fundamental object of the Franchise Security Law. This is characterized as the taking of funds from a private party and paying them to another private party whether or not the stated public interest is being served. It is said that this is an unconstitutional taking of private property without due process of law.

With respect to the argument that the classification made by the Franchise Security Law of franchised distributors is unconstitutional, we find that the classification

is not arbitrary or capricious, and is therefore not unconstitutional.

When the validity of a classification is before a court it will not substitute its judgment for that of the Legislature. On the contrary, the classification will be upheld if it can be held reasonable in the light of the purpose of the Law without doing violence to common sense. *Tusso v. Smith,* 39 Del. Ch. 198, 162 A. 2d 185 (Supr. 1960). If any facts can be assumed which will support the classification, then that assumption must be made to uphold the classification. *Aetna Casualty & Surety Co. v. Smith,* 36 Del. Ch. 391, 131 A. 2d 168 (1957).

We will not detail the facts and circumstances, the assumption of which would validate the classification. They are set out in Globe's brief. Suffice it to say we make the assumption and uphold the classification.

With respect to the argument that the remedy provided for termination or threat to terminate a franchise and turning it over to another is the taking of private property without due process of law, we are of the opinion that it is such a taking.

Globe argues earnestly that the remedy given is not punitive, but is in fact compensatory and that the distributor must prove his losses. We think, however, that the remedy prescribed is in fact punitive. By the Law, an aggrieved distributor is entitled to recover damages which are defined. It is provided that the recoverable damages "shall include, but shall not be limited to" certain specified items which we have set forth fully in the foregoing parts of this opinion. The Law does not require that actual loss be proven by the distributor before he is entitled to recover the statutory damages. The Law is mandatory that upon proof of a termination, or of a threat to terminate, the distributor shall recover the statutory damages. Thus it is

that the statutory damages, in the absence of any actual loss to the distributor, are not compensatory, but are in fact punitive. As such, they are the taking of private property without compensation and without due process of law.

The questions of law certified to us are not framed so as to permit merely an affirmative or negative answer. We have of course found some constitutional defects in the Franchise Security Law, and we have upheld others against a constitutional attack. We will accordingly simply state that the answers to the certified questions may be found in this opinion.

APPENDIX B.

AN ACT TO AMEND TITLE 6, CHAPTER 25, DELAWARE CODE, RELATING TO PROHIBITED TRADE PRACTICES BY ADDING A NEW SUBCHAPTER THERETO TO PROTECT FRANCHISED DISTRIBUTORS FROM UNJUST TERMINATION OF, OR FAILURE OR REFUSAL TO RENEW THEIR FRANCHISES.

WHEREAS, the relationship between franchised distributors and their suppliers and licensors is marked by economic dependence of the franchised distributor; and

WHEREAS, the suppliers and licensors of franchised distributors have terminated franchises on short notice without just cause, and have threatened and continued to threaten such termination; and

WHEREAS, such unjustified terminations unfairly deprive franchised distributors of their equity and the fruits of their labor after they have created a favorable market for the products, trademarks and trade names of their suppliers and licensors; and

WHEREAS, such terminations eliminate jobs, eliminate the productivity of going concerns and otherwise adversely affect the economic stability of this state; and

WHEREAS, such terminations interrupt the free and continuous flow of communication and information to the people of this state when the franchised distributor is a wholesaler of publications, and thereby interfere with the ability of the people to keep informed on public issues; and

WHEREAS, these conditions are detrimental to the public interest and general welfare of this state; and

WHEREAS, these detrimental conditions cannot be remedied through bargaining because of the franchised distributors' lack of bargaining power.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Title 6, Chapter 25 of the Delaware Code is amended by adding thereto a new subchapter to be known as Subchapter IV to read as follows:

"SUBCHAPTER IV. SECURITY FOR FRANCHISED DISTRIBUTORS § 2551. *Definitions.* As used in this chapter, unless the context otherwise requires.

(a) "Franchised distributor" means an individual, partnership, corporation, or unincorporated association with a place of business within the state, and engaged in in the business of:

(1) purchasing or taking on consignment products which bear the trademark or trade name of the manufacturer, producer or publisher for the primary purpose of selling such products to retail outlets; or

(2) selling in or through retail outlets products which bear the trademark or trade name of no more than three manufacturers, producers, publishers, trademark licensors, or trade name licensors; or

(3) purchasing or taking on consignment, books, magazines, journals, newspapers, and/or other publications for the primary purpose of selling such publications to retail outlets.

(b) "Franchisor" means an individual, partnership, corporation or unincorporated association in the business of:

(1) distributing or selling to one or more franchised distributors, on its own behalf or on behalf of another, products which bear the trademark or trade name of the manufacturer, producer or publisher; or

(2) licensing the use of one or more trademarks or trade names to one or more franchised distributors; or

(3) distributing or selling to one or more franchised distributors, on its own behalf or on behalf of another, books, magazines, journals, newspapers, and/or other publications published by it or by another.

(c) "Franchise" means a contract or other arrangement governing the business relationship within this state between a franchised distributor and a franchisor, where the franchised distributor is required to pay more than $100 to enter into said contract or other arrangement.

(d) "Products" means any tangible items offered for sale irrespective of their nature, including, without limiting the generality of the term, all types of publications.

§ 2552. *Unjust termination of, or failure to renew, a franchise*

(a) Termination of a franchise by a franchisor shall be deemed to be "unjust" or to have been made "unjustly" if such termination is without good cause or in bad faith. Any termination of a franchise which is not unjust shall be deemed to be "just" or to have been made "justly."

(b) The failure of a franchisor to renew a franchise shall be deemed to be "unjust" or to have been made "unjustly" if such failure to renew is without good cause or in bad faith. Any failure to renew a franchise which is not unjust shall be deemed to be "just" or to have been made "justly."

(c) A provision of a franchise which permits a franchisor to terminate that franchise, which provision does not specify the grounds upon which such termination may be made, shall be construed to permit the franchisor to make only a just termination.

(d) A provision of a franchise which permits a franchisor to fail to renew that franchise, which provision does not specify the grounds upon which such failure to renew may be made, shall be construed to permit the franchisor only justly to fail or refuse to renew.

(e) A provision in a franchise permitting a franchisor to make an unjust termination of a franchise is against the public policy of this state and shall not be enforced in the courts of this state.

(f) A provision in a franchise permitting a franchisor unjustly to fail or refuse to renew a franchise is against the public policy of this state and shall not be enforced in the courts of this state.

(g) No franchisor may unjustly terminate a franchise.

(h) No franchisor may unjustly fail or refuse to renew a franchise.

(i) No franchisor may unjustly refuse to deal with a franchised distributor with whom said franchisor has been dealing for at least two (2) years.

§ 2553. *Remedies.*

(a) If a franchisor (1) unjustly terminates a franchise, or (2) unjustly fails or refuses to renew a franchise, or (3) threatens, or attempts, or gives notice that it intends to attempt unjustly to terminate a franchise, or (4) threatens, or attempts, or gives notice that it intends to attempt unjustly to refuse to renew a franchise, then the franchised distributor whose franchise is threatened shall

be entitled to recover damages from the franchisor and, in addition, shall be entitled to secure in the Court of Chancery of this state, subject to general equitable principles, an order enjoining such termination or, in case of a failure or refusal to renew, a mandatory order for renewal of the franchise. Pending the issuance of such an order, the franchised distributor shall be entitled to an order enjoining such termination *pendente lite,* or in case of a failure or refusal to renew, a mandatory order extending the franchise *pendente lite.* Any such order, whether final or *pendente lite,* shall contain provisions directing the franchisor to sell or consign to the franchised distributor the products covered by the franchise and/or to license to the franchised distributor the trademarks or trade names covered by the franchise, and otherwise to deal with the franchised distributor under the terms of the franchise so terminated.

(b) Without limiting any other provisions of this chapter, if a franchisor unjustly refuses to deal with a franchised distributor with whom the franchisor has been dealing for at least two (2) years, the franchised distributor shall be entitled to recover damages from the franchisor pursuant to subparagraph (a) of this section plus all other damages (including, without limitation, loss of profits) allowed under the law of this state, and in addition, shall be entitled to secure in the Court of Chancery of this state an order directing the franchisor to deal with the franchised distributor on fair and competitive terms. Pending the issuance of such final order, the franchised distributor shall be entitled to secure such a mandatory order *pendente lite.*

(c) Except as otherwise provided in Subparagraph (b) of this section, damages recoverable pursuant to the provisions of this chapter shall include, but shall not be limited to, the following:

(1) a fractional portion of the franchised distributor's tangible assets (both real and personal) in this state used with respect to the terminated or unrenewed franchise, including, but not limited to, sales outlets and facilities, offices, warehouses, trucks and the furnishing, equipment, and accessories therein; the numerator of the fraction shall consist of the franchised distributor's gross sales (in the most recently completed fiscal year) within this state attributable to the terminated or unrenewed franchise, and the denominator of the fraction shall consist of the franchised distributor's total gross sales (in the most recently completed fiscal year) in this state; and

(2) loss of good will; and

(3) loss of profits, which loss shall be presumed to be no less than five times the profit obtained by the franchised distributor, by virtue of the terminated franchise in the most recently completed fiscal year;

(d) all other damages allowed under the law of this state; and

(e) the reasonable counsel fees and expenses incurred in the action or actions brought pursuant to this chapter.

§ 2554. *Notice required to terminate or elect not to renew a franchise.*

Notwithstanding any provision in a franchise agreement which provides otherwise, any termination of a franchise or election not to renew a franchise must be made on at least 90 days' notice.

§ 2555. *Application.*

This law shall apply to franchises in existence at its effective date and the renewal of such franchises, as well as franchises subsequently executed.

§ 2556. *Short title.*

This chapter may be cited as the Delaware Franchise Security Law.

§ 2557. *Severability.*

If any clause, paragraph, section or part of this law is declared unconstitutional by a court of competent jurisdiction, such judgment shall not affect, impair or invalidate the whole or any other portion of this law."

APPENDIX C.

IN THE

SUPREME COURT OF THE STATE OF DELAWARE

No. 151, 1970.

GLOBE LIQUOR CO., A DELAWARE CORPORATION,
Plaintiff,

v.

FOUR ROSES DISTILLERS COMPANY, A DIVISION OF JOSEPH E. SEAGRAM & SONS, INC.,
Defendant.

AND NOW, to-wit, this 20th day of July, A. D. 1971, this Court having approved the above proceeding on Certification from the Court of Chancery in and for New Castle County, instituted in Civil Action No. 3373, by virtue of which proceeding the following questions of law were certified for hearing and determination:

"Does the Delaware Franchise Securtiy Law violate either:

"A. Section 10 of Article I of the Constitution of the United States;

"B. The Fourteenth Amendment of the Constitution of the United States;

"C. Section 7 of Article 1 of the Constitution of the State of Delaware; or

"D. Section 8 of Article 1 of the Constitution of the State of Delaware?"

And the parties having filed briefs with respect thereto; and the foregoing questions of law having been maturely considered by the Court, and the Court having filed its Opinion thereon on June 29, 1971; it is therefore

ORDERED that, since the questions of law certified to us are not framed so as to permit merely an affirmative or negative answer, the answers to the certified questions may be found in the Court's Opinion dated June 29, 1971, a copy of which is attached to this Order; and it is

FURTHER ORDERED that the Clerk of this Court transmit to the Register in Chancery in and for New Castle County a certified copy of this Order and a certified copy of the Opinion in this cause, together with a certified statement of the costs in this Court to be taxed as part of the costs below.

DANIEL F. WOLCOTT,
C. J.

JAMES B. CAREY,
J.

WILLIAM MARVEL,
Vice Chancellor.

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IN THE

Supreme Court of the United States

October Term, 1971.

~~No. 150.~~ 71-150

GLOBE LIQUOR CO., a
Delaware Corporation,

Petitioner,

v.

FOUR ROSES DISTILLERS COMPANY,
a Division of Joseph E. Seagram & Sons, Inc.,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION.

JAMES M. TUNNELL, JR.,
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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1971.

No. 150.

GLOBE LIQUOR CO., A DELAWARE CORPORATION,
Petitioner,

v.

FOUR ROSES DISTILLERS COMPANY, A DIVISION OF JOSEPH E. SEAGRAM & SONS, INC.,
Respondent.

REASONS FOR DENYING THE WRIT.

The Judgment of the Delaware Supreme Court Is Based Upon the Delaware Constitution and Is, Accordingly, Supported by Adequate and Independent State Grounds.

The petitioner seeks a writ of certiorari from this Court on the ground that this case raises important questions of federal constitutional law which have not been, but should be, decided by this Court. There were in fact four questions certified to the Delaware Supreme Court in